

BEFORE THE BOARD OF PROFESSIONAL ENGINEERS  
AND PROFESSIONAL LAND SURVEYORS  
DEPARTMENT OF LABOR AND INDUSTRY  
STATE OF MONTANA

In the matter of the proposed ) NOTICE OF PUBLIC HEARING  
amendment of ARM 24.183.404 ) ON PROPOSED AMENDMENT AND  
fee schedule, ARM 24.183.511 ) ADOPTION  
license seal, ARM 24.183.702 )  
classification of experience )  
for engineering applicants, )  
ARM 24.183.2105 continuing )  
education, ARM 24.183.2202 )  
safety, health and welfare of )  
the public and the proposed )  
adoption of NEW RULES I-III )  
pertaining to classification )  
of experience, branch offices, )  
and fee abatement )

TO: All Concerned Persons

1. On March 7, 2006, at 10:00 a.m., a public hearing will be held in room 489 of the Park Avenue Building, 301 South Park Avenue, Helena, Montana to consider the proposed amendment and adoption of the above-stated rules.

2. The Department of Labor and Industry will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or who need an alternative accessible format of this notice. If you require an accommodation, contact Brooke Jasmin no later than 5:00 p.m., March 1, 2006, to advise us of the nature of the accommodation you need. Please contact Brooke Jasmin, Board of Professional Engineers and Professional Land Surveyors, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2351; Montana Relay 1-800-253-4091; TDD (406) 444-2978; facsimile (406) 841-2309; e-mail dlibsdpels@mt.gov.

3. The rules proposed to be amended provide as follows, stricken matter interlined, new matter underlined:

24.183.404 FEE SCHEDULE (1) Fees shall be transmitted to the Board of Professional Engineers and Land Surveyors. Fees for examinations administered by third party vendors must be paid directly to the vendor approved by the board. The board assumes no responsibility for loss in transit of such remittances. Applicants not submitting the proper fees will be notified by the department.

(2) remains the same.

(3) Fees are as follows:

(a) Engineer interns initial application

\$25

<del>(i) Initial application and examination</del>	<del>\$80</del>
<del>(ii) Re-examination</del>	<del>70</del>
(b) Land surveyor interns <u>initial application</u>	<u>25</u>
<del>(i) Initial application and examination</del>	<del>95</del>
<del>(ii) Re-examination</del>	<del>85</del>
(c) Professional engineers	
(i) Initial application and examination for Montana engineer intern	150 <u>50</u>
<del>(ii) Initial application and examination for non-Montana engineer intern</del>	<del>170</del>
<del>(iii) Re-examination</del>	<del>130</del>
<del>(iv) (ii) Application by comity</del>	<del>250</del> <u>150</u>
(d) Professional land surveyors	
(i) Initial application and examination	175 <u>50</u>
<del>(ii) Re-examination for principles and practices examination</del>	<del>140</del>
<del>(iii) (ii) Re-examination only for Montana law specific</del>	<del>25</del> <u>50</u>
<del>(iv) (iii) Application by comity which includes Montana law specific exam</del>	<del>200</del>
(e) through (f)(iii) remain the same.	
(iv) Certificate of authority	25 <u>50</u>
(g) through (iii) remain the same.	
(iv) Certificate of Authority	12.50 <u>25</u>
(h) through (h)(iii) remain the same.	
(iv) Reschedule fee for <u>Montana law</u> examinations	25

AUTH: 37-1-134, 37-67-202, MCA

IMP: 37-1-134, 37-1-319, 37-67-303, 37-67-312, 37-67-313, 37-67-315, 37-67-320, 37-67-321, MCA

**REASON:** There is a reasonable necessity to amend the current fee schedule to address the change in examination process brought on by a contractual agreement with a third party examination vendor. Fees for applications will only reflect the fees needed to support administrative and board review and will exclude examination fees as were previously included. The comity application fees were also lowered to set fees commensurate with costs. Newer records programs for both professional engineers and professional land surveyors allows for easier processing and therefore faster turnaround of comity applicants. This fee schedule change will affect 650 applicants by examination and 250 comity applicants. Business entity renewal fees were changed to reflect time spent by staff inputting updated information for renewals. This increase will affect 735 business entities. The Board is required pursuant to 37-1-134, MCA, to set fees at a level commensurate with costs. The Board estimates that a total of approximately 1435 persons and entities per year will be affected by the proposed changes. The Board estimates that excluding examination costs, revenue will be decreasing approximately \$4,250 per year. The Board estimates that the overall fees to examination applicants will

increase by approximately \$30,000 (including fees paid to the examination vendor), although the Board's revenue will decrease by approximately \$58,550 per year.

24.183.511 LICENSE SEAL (1) remains the same.

(a) pocket seal, the size commercially designated as a 1 5/8 inch seal; and

(b) remains the same.

(c) the seal will bear the licensee's name, license number and the legend "Licensed Professional Engineer", "Licensed Professional Land Surveyor" or "Licensed Professional Engineer and Professional Land Surveyor"; and

(d) a seal is allowed to be reduced to one half of its original size.

(2) remains the same.

(3) Individuals licensed as a "Professional Engineer", "Professional Land Surveyor" or "Professional Engineer and Professional Land Surveyor" may secure an official seal, which must contain the licensee's name, license number, and the applicable legend "Licensed Professional Engineer", "Licensed Professional Land Surveyor", or "Licensed Professional Engineer and Land Surveyor". For the purpose of sealing printed drawings, specifications, and other appropriate documents, each licensee shall obtain an embossing or rubber stamp and an electronic reproduction facsimile of the seal to be used on documents prepared by or under the supervision of a licensee. When required, the seal or electronic reproducible facsimile must be applied on all final original drawings, with the licensee's signature, to produce legible reproduction on all copies or prints made from the drawings.

(4) A signature is:

(a) an original manual signature of the licensee who applied it; or

(b) a digital signature, which has an electronic authentication process attached or is logically associated with an electronic document, and must be:

(i) unique to the person using it;

(ii) capable of verification;

(iii) under the sole control of the person using it; and

(iv) linked to a document in such a manner that the digital signature is invalidated if any data in the document is changed.

AUTH: 37-67-202, MCA

IMP: 37-67-314, MCA

REASON: The Board finds it reasonable and necessary to amend this rule to accommodate the use of electronic technology and to allow the seal to be reduced to half size to accommodate half size drawings, both of which changes have been requested by licensees.

24.183.702 CLASSIFICATION OF ENGINEERING EXPERIENCE

(1) Engineering experience ~~or land surveying experience~~ shall include the following:

(a) Sub-professional experience gained before graduation. This experience shall be credited to the required pre-professional experience at a maximum of one-half the period of experience. Credible experience may include:

~~(i) surveying experience, supervised;~~

~~(ii)~~ (i) engineering experience, supervised; or

~~(iii)~~ (ii) construction experience, supervised.

(b) Pre-professional experience is four years of total progressive experience, all of which is required to be completed at the time of application. Credible experience may include:

(i) approved sub-professional experience;

(ii) progressive experience on engineering/~~land surveying~~ projects which indicate the experience is of increasing quality and required greater responsibility; (iii) and (iv) remain the same.

(v) credible teaching experience at an advanced level, post graduate or senior graduate, in a college or university offering an engineering curriculum of four years or more that is approved by the board. ~~Land surveying teaching experience shall also be at an advanced level on a land surveying curriculum approved by the board;~~

(vi) through (4) remain the same.

~~(5) Land surveying experience must include a substantial portion spent in charge of work related to property conveyance and/or boundary line determination.~~

~~(6) Upon request by the board, land surveyor applicants must demonstrate adequate experience in the field aspects of the profession.~~

~~(a) Land survey experience such as section breakdowns, retracing old boundaries, establishing new boundaries, corner search and re-establishment, calculations and preparations of certificates of surveys, deed searches and corner recordation, consists of work done under the supervision of a registered professional land surveyor.~~

~~(b) Other survey experience is survey work which may or may not be done under the supervision of a registered professional land surveyor. It includes such work as construction layout of buildings and miscellaneous structures; surveys necessary to obtain data and location of highways, roads, pipelines, canals, etc.; construction staking for land modification; and construction staking for highways, roads, utilities, etc.~~

AUTH: 37-67-202, MCA

IMP: 37-67-306, 37-67-309, MCA

REASON: The Board finds it reasonable and necessary to amend this rule because the experience required for an engineer is different than the experience of a land surveyor. The experience necessary for both professions is unique, and it is confusing to have the two combined in one rule, as it is now.

24.183.2105 CONTINUING PROFESSIONAL COMPETENCY - CONTINUING EDUCATION (1) Every licensee shall meet the continuing professional competency (continuing education) requirements of these regulations for professional development as a condition for licensure renewal. ~~Licensees shall begin accruing credits in 1998, to be reported with the 2000 renewal.~~

(2) through (4)(g) remain the same.

(h) for teaching apply multiple of two. (Teaching credit is valid for teaching a course or seminar for the first time only. Teaching credit does not apply to full-time faculty.)

(i) self study.....10 PDH

(A maximum of 10 PDH will be allowed per renewal cycle for self study. Self-study is considered a formatted review of new subject matter or technical information such as video tapes series, internet courses that do not include a final examination, etc.)

(5) and (6) remain the same.

(7) A licensee may be exempt from the professional development educational requirements for one of the following reasons:

(a) New licensees by way of examination or ~~reciprocity~~ comity shall be exempt from accruing PDHs for 12 months following licensure, after which 7.5 PDHs are required for each six month period of licensure until the ~~for their first renewal period that occurs on or after June 30, 2008;~~

(b) through (10) remain the same.

(a) Failure to obtain continuing education acceptable to the board within the 90-day period will result in non-renewal of the license;

(b) A licensee whose license is not renewed by the end of the 90-day period for failing to obtain the satisfactory PDH will be required to reapply, pay the appropriate fee and obtain the necessary PDH during the non-renewal period (not to exceed the annual requirement for two years acceptable to the board.)

AUTH: 37-1-319, MCA

IMP: 37-1-306, 37-1-319, MCA

REASON: The Board finds it reasonable and necessary to amend this rule to remove archaic dates that no longer apply. In addition, the Board wishes to clarify self-study that will be accepted and provide guidance to new licensees on what accumulation of continuing education (professional development hours) they must have.

24.183.2202 SAFETY, HEALTH, AND WELFARE OF THE PUBLIC  
PARAMOUNT IN THE PERFORMANCE OF PROFESSIONAL DUTIES (1) and (2) remain the same.

(3) Licensees having direct knowledge of any alleged violation of the laws and rules of professional conduct must report all such allegations to the board.

AUTH: 37-1-319, 37-67-202, MCA

IMP: 37-1-316, 37-67-301, MCA

REASON: The Board finds it reasonable and necessary to amend this rule to clarify the licensee's responsibility in reporting violations to the Board. The current rule may lead licensees to believe that they are required to report second hand information of a violation. The Board's intent is that only direct knowledge must be reported.

4. The proposed New Rules provide as follows:

NEW RULE I CLASSIFICATION OF EXPERIENCE FOR LAND SURVEYING APPLICANTS (1) Land surveying experience shall include the following:

(a) preprofessional experience of four years of total progressive experience, gained under the supervision of a licensed professional land surveyor, all of which is required to be completed at the time of application. Land surveying experience must include a substantial portion spent in charge of work related to property conveyance and/or boundary line determination. Credible experience may include one or more of the following:

- (i) approved preprofessional experience;
- (ii) progressive experience on land surveying projects which indicate the experience is of increasing quality and required greater responsibility;
- (iii) experience not obtained in violation of the licensure act;
- (iv) experience such as aliquot part subdivision of sections, retracing existing boundaries, establishing new boundaries, corner search and re-establishment, researching existing public records, survey computations, preparation of legal descriptions, certificates of survey, subdivision plats, corner recordation forms, exhibits and other documents pertinent to such work; or
- (v) credible teaching experience at an advanced level, post graduate or senior graduate, in a college or university offering a land surveying curriculum approved by the board, gained under the supervision of a licensed land surveyor.

(2) Experience time cannot be counted during periods counted for education.

(3) Upon request by the board, land surveyor applicants must demonstrate adequate experience in the field aspects of the profession.

(4) Subprofessional experience shall be credited to the required preprofessional experience at a minimum of one-half the period of experience. Subprofessional experience shall be limited to a maximum of four years to be credited as no more than two years of pre-professional experience. Credible subprofessional experience may include one or more of the following:

- (a) approved subprofessional experience;
- (b) survey experience done under the supervision of a licensed professional land surveyor, including such work as:
  - (i) construction layout of buildings and miscellaneous structures;
  - (ii) surveys necessary to obtain data and location of highways, roads, pipelines, canals, etc.;
  - (iii) construction staking for land modification; and
  - (iv) construction staking for highways, roads, utilities, etc.;
- (c) other construction surveying experience supervised by a licensed professional land surveyor; or
- (d) other surveying experience supervised by a licensed professional land surveyor.

AUTH: 37-67-202, MCA

IMP: 37-67-306, 37-67-309, MCA

REASON: The Board finds it reasonable and necessary to create this new rule because the experience required for an engineer is different than the experience of a land surveyor. The experience necessary for both professions is unique, and it is confusing to have the two combined in one rule, as it is now.

NEW RULE II BRANCH OFFICE (1) A branch office of an engineering or land surveying firm is defined as an office established to solicit and/or provide engineering or land surveying services.

(a) Each branch office of an engineering firm must have a resident professional engineer in responsible charge.

(b) Each branch office of a surveying firm must have a resident professional land surveyor in responsible charge.

(2) A resident professional engineer is defined as a person holding a valid professional engineering license in Montana and who supervises and is in responsible charge of all engineering work performed in the branch office. The resident professional engineer is not required to be physically located at the branch office.

(3) A resident professional land surveyor is defined as a person holding a valid professional land surveyor license in Montana and who supervises and is in responsible charge of all land surveying work performed in the branch office. The resident professional land surveyor is not required to be physically located at the branch office.

AUTH: 37-1-131, MCA

IMP: 37-67-202, MCA

REASON: The Board finds it reasonable and necessary to create this new rule to make certain all acts, which constitute the practice of engineering or land surveying, are adequately supervised and effectively managed by licensed individuals.

NEW RULE III FEE ABATEMENT (1) The Board of Professional Engineers and Professional Land Surveyors adopts and incorporates by reference the fee abatement rule of the Department of Labor and Industry found at ARM 24.101.301.

AUTH: 37-1-131, MCA

IMP: 17-2-302, 17-2-303, 37-1-134, MCA

REASON: The Board has determined there is reasonable necessity to adopt and incorporate by reference ARM 24.101.301 to allow the Board to authorize the Department to perform renewal licensure fee abatements as appropriate and when needed, without further vote or action by the Board. The Department recently adopted ARM 24.101.301 to implement a means for the prompt elimination of excess cash accumulation in the licensing programs operated by the Department.

Adoption and incorporation of ARM 24.101.301 will allow the Department to promptly eliminate excess cash balances of the Board that result from unexpectedly high licensing levels or other non-typical events. Abatement in such instances will allow

the licensees who have paid fees into the Board's program to receive the temporary relief provided by abatement. Adoption of this abatement rule does not relieve the Board from its duty to use proper rulemaking procedures to adjust the Board's fee structure in the event of recurrent instances of cash balances in excess of the statutory allowed amount.

5. Concerned persons may present their data, views or arguments either orally or in writing at the hearing. Written data, views or arguments may also be submitted by mail to Brooke Jasmin, Board of Professional Engineers and Professional Land Surveyors, Department of Labor and Industry, P.O. Box 200513, Helena, Montana 59620-0513, by facsimile to (406) 841-2309, or by e-mail to [dlibsdpels@mt.gov](mailto:dlibsdpels@mt.gov) and must be received no later than 5:00 p.m., March 15, 2006.

6. An electronic copy of this Notice of Public Hearing is available through the Department and Board's site on the World Wide Web at <http://engineer.mt.gov>, in the Rules Notices section. The Department strives to make the electronic copy of this Notice of Public Hearing conform to the official version of the Notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the Notice and the electronic version of the Notice, only the official printed text will be considered. In addition, although the Department strives to keep its website accessible at all times, concerned persons should be aware that the website may be unavailable during some periods, due to system maintenance or technical problems, and that a person's technical difficulties in accessing or posting to the e-mail address do not excuse late submission of comments.

7. The Board of Professional Engineers and Professional Land Surveyors maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this Board. Persons who wish to have their name added to the list shall make a written request that includes the name and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding all Board of Professional Engineers and Professional Land Surveyors administrative rulemaking proceedings or other administrative proceedings. Such written request may be mailed or delivered to the Board of Professional Engineers and Professional Land Surveyors, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, faxed to the office at (406) 841-2309, e-mailed to [dlibsdpels@mt.gov](mailto:dlibsdpels@mt.gov) or may be made by completing a request form at any rules hearing held by the agency.

8. The bill sponsor notice requirements of 2-4-302, MCA, do not apply.



9. Lon Mitchell, attorney, has been designated to preside over and conduct this hearing.

BOARD OF PROFESSIONAL ENGINEERS  
AND PROFESSIONAL LAND SURVEYORS  
DENIS APPLEBURY, PRESIDING OFFICER

/s/ MARK CADWALLADER  
Mark Cadwallader  
Alternate Rule Reviewer

/s/ KEITH KELLY  
Keith Kelly, Commissioner  
DEPARTMENT OF LABOR AND INDUSTRY

Certified to the Secretary of State January 30, 2006